

Leon

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

MAR -9 2005

MAR 10 2005

DOCKETED BY

nr

AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
MOHAVE COOPERATIVE SERVICES, INC. FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD LONG DISTANCE, RESOLD LOCAL
EXCHANGE AND FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATIONS
SERVICES IN ARIZONA.

DOCKET NO. T-04268A-04-0491

DECISION NO. 67673

OPINION AND ORDER

DATE OF HEARING: January 24, 2005
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Wolfe
APPEARANCES: Mr. Michael W. Patten, ROSKA HEYMAN &
DEWULF, PLC, on behalf of Mohave Cooperative
Services, Inc.; and
Mr. Timothy J. Sabo, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 2, 2004, Mohave Cooperative Services, Inc. ("MCS" or "Applicant") filed
with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
provide resold long distance and resold and facilities-based local exchange telecommunications
services within the State of Arizona ("Application"). The Application petitioned the Commission for
determination that its proposed services should be classified as competitive.

2. MCS is an Arizona for-profit corporation in good standing in Arizona.

3. MCS is currently in the business of providing satellite television services and dial-up

1 internet services at retail.

2 4. On October 29, 2004, the Staff filed its Staff Report, recommending approval of the
3 Application and including a number of additional recommendations.

4 5. On November 1, 2004, a Procedural Order was issued setting this matter for hearing
5 on January 24, 2005 and setting various procedural deadlines.

6 6. On November 18, 2004, Applicant docketed an Affidavit of Publication that complies
7 with Commission rules.

8 7. On January 24, 2005, a full public hearing in this matter was held as scheduled. MCS
9 appeared and was represented by counsel. Staff appeared and was represented by counsel. The
10 hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented
11 and testimony was taken. At the conclusion of the hearing, the Administrative Law Judge took the
12 matter under advisement.

13 8. Testimony at the hearing indicated that MCS was formerly owned and operated by
14 Mohave Electric Cooperative, Inc., but that the MCS assets were spun off to Western Competitive
15 Solutions, Inc., the holding company of MCS, in 1998. MCS is wholly owned by Western
16 Competitive Solutions, Inc., which is in turn owned 50 percent by Lyn R. Borah and 50 percent by
17 Robert E. Broz. Mr. Broz is also the CEO of Mohave Electric Cooperative, Inc.

18 9. Testimony at the hearing indicated that Mohave Electric Cooperative, Inc. has no
19 ownership interest in Western Competitive Solutions, Inc. or in MCS, and that MCS and Mohave
20 Electric Cooperative, Inc. share no facilities. They do have a common officer in Mr. Broz, and a
21 common employee. Mohave Electric Cooperative, Inc. bills MCS monthly for MCS' use of its
22 employees. MCS and Mohave Electric Cooperative, Inc. do not engage in joint marketing or provide
23 each other access to their customer lists.

24 10. Testimony at the hearing indicated that MCS is not providing telecommunications
25 service at this time. MCS plans to initially provide the proposed telecommunications services over a
26 fiber to the home network in the new Laughlin Ranch subdivision in Bullhead City.

27 11. Applicant has the technical capability to provide the services that are proposed in its
28 Application.

12. Currently there are several incumbent providers of local exchange and interexchange services in the service territory requested by Applicant, and numerous other entities have been authorized to provide competitive local and interexchange services in all or portions of that territory.

13. It is appropriate to classify all of Applicant's authorized services as competitive.

14. The Staff Report stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

15. MCS submitted financial statements of its company for the calendar years 2002 and 2003. These financial statements list assets of \$5.19 million, equity of \$2.06 million, and a net income of \$600,169.

16. Staff recommended that MCS' Application for a Certificate to provide competitive resold and facilities-based local exchange telecommunications services be granted. In addition, Staff further recommended that the Commission order Applicant to:

- (a) within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, either 1) file a letter with the Commission's Docket Control Center stating that it provides services solely through the use of its own facilities, or 2) procure an Interconnection Agreement that must remain in effect until further Order of the Commission;
- (b) within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, file with the Commission's Docket Control Center Applicant's plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases, which plan must remain in effect until further Order of the Commission;
- (c) pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;
- (d) abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);
- (e) abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) refrain from barring access to alternative local exchange service providers who wish to serve areas where Applicant is the only provider of local exchange service facilities;
- (g) within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, certify, through the 911 service provider in the areas in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers, which certification must remain in effect until

further Order of the Commission;

- (h) abide by all the Commission decisions and policies regarding CLASS services;
- (i) provide 2-PIC equal access;
- (j) notify the Commission immediately upon changes to its name, address or telephone number;
- (k) comply with all Commission rules, Orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) maintain its accounts and records as required by the Commission;
- (m) file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) cooperate with Commission investigations including, but not limited to, customer complaints;
- (p) participate in and contribute to a universal service fund, as required by the Commission;
- (q) abide by the Commission's rules and the 1996 Telecommunications Act and the rules promulgated thereunder to the extent that they apply to CLECs; and
- (r) if Applicant desires to discontinue service, file an application with the Commission pursuant to A.A.C. R14-2-1107, and notify each customer and the Commission 60 days prior to filing an application to discontinue service. Staff further recommended that Applicant's failure to comply with this requirement should result in forfeiture of Applicant's performance bond.

17. Staff additionally recommended that MCS' application for a Certificate to provide intrastate telecommunications services should be granted subject to the conditions included in this Findings of Fact, that Applicant's failure to comply with these conditions result in Applicant's Certificate becoming null and void without further Order of the Commission, and that no time extensions be granted for compliance with these conditions, which are as follows:

- (a) MCS shall file, with the Commission's Docket Control Center, conforming tariffs for resold long distances service, resold local exchange service and facilities-based local exchange service within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first;

1 (b) MCS shall procure a performance bond equal to \$135,000. The minimum
2 bond amount of \$135,000 shall be increased if at any time it would be
3 insufficient to cover advances, deposits, and/or prepayments collected from
4 MCS' customers. The bond amount shall be increased in increments of
\$67,500 whenever the total amount of the advances, deposits and prepayments
is within \$13,500 of the bond amount; and

5 (c) MCS shall docket proof of the performance bond within 365 days of the
6 effective date of this Order or 30 days prior to the provision of service,
7 whichever comes first, and the performance bond must remain in effect until
further Order of the Commission.

8 18. Based upon MCS' indication that it collects advances, deposits, and/or prepayments
9 from its customers, Staff recommended that if at some time in the future, MCS does not collect from
10 its resold long distance customers advances, prepayments, or deposits, that MCS should be allowed to
11 file with the Commission a request for cancellation of its established performance bond for the resold
12 long distance portion of the bond only. Staff recommended that such request must reference the
13 Decision in this docket and must explain MCS' plans for canceling those portions of the bond.

14 19. In its Staff Report, Staff stated that based on information obtained from the Applicant,
15 it has determined that MCS' fair value rate base is zero, and is too small to be useful in a fair value
16 analysis.
17

18 20. Staff further stated that in general, rates for competitive services are not set according
19 to rate of return regulation, and Staff reviewed the rates to be charged by the company and believes
20 that they are just and reasonable as they are comparable to other competitive local carriers, local
21 incumbent carriers and several operating long distance carriers. Therefore, while Staff considered the
22 fair value rate base information submitted by MCS, the fair value rate base information provided
23 should not be given substantial weight in this analysis.
24

25 21. Staff's recommendations, as set forth herein, are reasonable.

26 22. MCS' fair value rate base is determined to be zero for purposes of this proceeding.
27
28

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 Application.

6 3. Notice of the Application was given in accordance with the law.

7 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
8 Certificate to provide competitive telecommunications services.

9 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
10 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
11 in its Application.

12 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
13 competitive resold and facilities-based local exchange telecommunications services and competitive
14 resold long distance services in Arizona, subject to the conditions recommended by Staff as set forth
15 in Findings of Fact No. 17 above.

16 7. Applicant should be ordered to comply with the requirements recommended by Staff
17 as set forth in Findings of Fact No. 16 above.

18 7. The telecommunications services that the Applicant intends to provide are competitive
19 within Arizona.

20 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
21 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are
22 not less than the Applicant's total service long-run incremental costs of providing the competitive
23 services approved herein.

24 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

25 10. Applicant's competitive rates, as set forth in its proposed tariffs, are just and
26 reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the Application of Mohave Cooperative Services, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange and competitive resold long distance services in Arizona shall be, and is hereby, granted, conditioned upon Mohave Cooperative Services, Inc.'s timely compliance with the following two Ordering Paragraphs.

IT IS FURTHER ORDERED that Mohave Cooperative Services, Inc. shall file tariffs conforming to the proposed tariffs in its application within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Mohave Cooperative Services, Inc. shall procure and docket proof of a performance bond equal to \$135,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service, and shall increase the bond amount in increments of \$67,500 whenever the total amount of the advances, deposits and prepayments is within \$13,500 of the bond amount.

IT IS FURTHER ORDERED that if Mohave Cooperative Services, Inc. fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that Mohave Cooperative Services, Inc. shall comply with all of the Staff recommendations set forth Findings of Fact No. 16 above.

IT IS FURTHER ORDERED that if, at some time in the future, Mohave Cooperative Services, Inc. does not collect from its resold long distance customers advances, prepayments, or deposits, Mohave Cooperative Services, Inc. shall have the opportunity to file with the Commission a request for cancellation of its established performance bond for the resold long distance portion of the bond only. The request shall reference this Decision and shall include an explanation of Mohave Cooperative Services, Inc.'s plans for canceling the resold long distance portion of the bond.

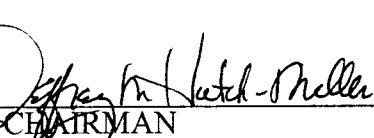
...

...

IT IS FURTHER ORDERED that if Mohave Cooperative Services, Inc. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that Mohave Cooperative Services, Inc.'s performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

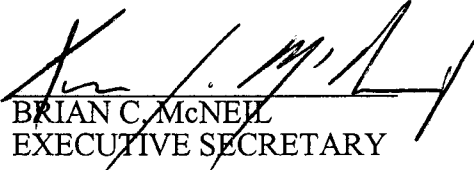

COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 9th day of March, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

SERVICE LIST FOR: MOHAVE COOPERATIVE SERVICES, INC.

DOCKET NO.: T-04268A-04-0491

Michael W. Patten
ROSHKA HEYMAN & DEWULF, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
Attorneys for Mohave Cooperative Services, Inc.

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

